

Memorandum

To: State Energy Plan
Municipal Financing Program Contractors

Date: June 10, 2010

From: Claudia Chandler
Chief Deputy Director

Subject: Western Riverside Council of Governments Protest

As you are aware, on May 21, 2010 the Superior Court of Riverside County issued an order directing the Department of General Services (DGS) to hear the protest brought by the Western Riverside Council of Governments (WRCOG) that DGS had previously rejected. The Department of General Services and the Energy Commission have appealed this decision, and today the Energy Commission filed a motion with the Superior Court asking that it confirm that the order is stayed during the appeal. The motion has two purposes:

- 1) To apprise the court that applicants were in fact required to ensure their programs complied with the loading order, which is established state energy policy. Therefore, even if DGS hears WRCOG's protest, WRCOG is not likely to prevail in the protest; and
- 2) To advise the court that whatever the outcome of the appeal and protest may be, the Energy Commission does not have adequate time within the federal Department of Energy deadlines to undertake a new solicitation. Therefore, the litigation cannot result in WRCOG's ability to participate in the competitive process for the funds at issue in Program Opportunity Notice 4009-09-401.

Even if the Energy Commission's determination of disqualification, due to WRCOG's refusal to follow the loading order is ultimately deemed inappropriate, WRCOG can only recover damages from the Energy Commission (for example, the cost of preparing its application). As a result, the rest of the State of California should not suffer the loss of these federal stimulus monies due to the litigation. A new order by the Superior Court confirming that its May 21, 2010 order is stayed would allow the Energy Commission and DGS to complete the approval process for the prevailing applicants that are identified in the notice of proposed award.

We are asking that the motion be heard in the Riverside County Superior Court in early July. Our motion can be viewed at [www.energy.ca.gov/recovery/awards/index.html]. Please direct questions regarding the WRCOG protest and the litigation to Chief Counsel Michael J. Levy at mlevy@energy.state.ca.us (916-654-3951).

Sincerely,

Claudia Chandler

CLAUDIA CHANDLER
Chief Deputy Director